

**Letter of Findings Number: 43-20100518P  
Underground Storage Tank Fees  
For the Tax Years 2006-2008**

**NOTICE:** Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Underground Storage Tank Environmental Penalty – Imposition.**

**Authority:** 42 U.S.C. § 6991a; IC § 6-8.1-1-1; IC § 6-8.1-5-1; IC § 13-23-12-1; IC § 13-23-12-4; IC § 13-23-12-6; IC § 13-23-12-7; 40 C.F.R. Part 280, Appendix II; [328 IAC 1-3-3](#); [329 IAC 9-2-2](#).

Taxpayer protests the imposition of environmental penalties for unpaid underground storage tank fees.

**STATEMENT OF FACTS**

Taxpayer owns and operates two convenience stores and gas stations (facilities A & B). These facilities were purchased in 2006. There are three underground storage tanks (USTs) at each facility. In July 2010, the Department billed Taxpayer for registration fees for the six USTs for each year from 2006 to 2009. The Department also assessed a 10 percent penalty and interest on each fee. Finally, the Indiana Department of Environmental Management (IDEM) requested that the Department also assessed a total of \$54,000 in "environmental penalties." These environmental penalties consisted of: \$6,000 for 2006; \$12,000 on facility A for 2007; \$12,000 on facility B for 2007; \$18,000 on facility A for 2008; and \$18,000 on facility B for 2008. Taxpayer protests the assessment of the environmental penalties.

**I. Underground Storage Tank Environmental Penalty – Imposition.**

**DISCUSSION**

IC §13-23-12-1 imposes a fee on underground storage tanks. Although the IDEM regulates underground storage tanks for the State, IC § 13-23-12-4 mandates that the Department of Revenue collect and deposit the underground storage tank fees. IC § 6-8.1-1-1 defines "listed tax" to include "the underground storage tank fee ([IC 13-23](#))." The laws and regulations concerning the Department's collection of listed taxes apply to the Department's collection of the underground storage tank fees. All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c).

The fee on USTs is imposed at IC §13-23-12-1 as follows:

(a) Each year the owner of an underground storage tank that has not been closed before July 1 of any year under:

(1) rules adopted under [IC 13-23-1-2](#); or

(2) a requirement imposed by the commissioner before the adoption of rules under [IC 13-23-1-2](#); shall pay to the department of state revenue an annual registration fee.

The amount of the registration fee is found in subsection (b) of IC § 13-23-12-1 as follows:

(b) The annual registration fee required by this section is as follows:

(1) Ninety dollars (\$90) for each underground petroleum storage tank.

(2) Two hundred forty-five dollars (\$245) for each underground storage tank containing regulated substances other than petroleum.

Taxpayer has since paid the unpaid registration fees, and the associated 10 percent penalty and interest on the fees.

If an owner of a UST does not pay their annual registration fees described in IC § 13-23-12-1, the owner "shall be assessed a penalty of not more than two thousand dollars (\$2,000) per underground storage tank for each year that passes after the fee becomes due and before the fee is paid." IC § 13-23-12-7(a). This penalty is referred to as the "environmental penalty." [328 IAC 1-3-3\(e\)\(3\)](#). The Indiana Administrative Code clarifies this penalty, stating that:

For sites containing only tanks that were never registered, or sites containing only tanks for which no tank fees were paid when due, the penalty will be calculated at two thousand dollars (\$2,000) under [IC 13-23-12-7\(a\)](#) per petroleum underground storage tank per year that passes after each year's fee is due. [328 IAC 1-3-3\(f\)\(2\)\(A\)](#).

Because Taxpayer owns three USTs at two different facilities, the Department assessed \$6,000 for 2006, \$12,000 on facility A for 2007; \$12,000 on facility B for 2007; \$18,000 on facility A for 2008; and \$18,000 on facility B for 2008. This is because the penalty is cumulative. Per IC § 13-23-12-7(a), the penalty is "two thousand dollars (\$2,000) per underground storage tank **for each year that passes after the fee becomes due** and before the fee is paid" (**Emphasis added**). For example, if a fee on one of the tanks that was due in 2006 was not paid until 2008, then \$2,000 is assessed **for each year that passed** before that 2006 year fee was paid (\$2,000 for 2006; \$2,000 for 2007; and \$2,000 for 2008). The same is true for the 2007 fee if it was not paid until 2008, the

2008 fee if it was not paid until 2008, and so on. With that being the case, the environmental penalties were assessed as illustrated below:

	2006	2007(A)	2007(B)	2008(A)	2008(B)
2006 Fees	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00
2007 Fees		\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00
2008 Fees				\$6,000.00	\$6,000.00
Subtotal	\$6,000.00	\$12,000.00	\$12,000.00	\$18,000.00	\$18,000.00

Taxpayer states that it never received any bills or notices for registration fees since the purchase of facilities A & B until 2010. IC § 13-23-12-6 states that:

[a]t least thirty (30) days before payment of a fee is due in accordance with the schedule established under section 3 of this chapter, the department of state revenue shall **attempt to notify** each **owner** of an underground storage tank **who has submitted notification to the department as required under 42 U.S.C. 6991a(a)** of the requirements of this chapter. (**Emphasis added**).

42 U.S.C. § 6991a(a) states that:

(a) Underground storage tanks

(1) Within 18 months after November 8, 1984, each owner of an underground storage tank shall notify the State or local agency or department designated pursuant to subsection (b)(1) of this section of the existence of such tank, specifying the age, size, type, location, and uses of such tank.

...

(3) Any owner which brings into use an underground storage tank after the initial notification period specified under paragraph (1), shall notify the designated State or local agency or department within thirty days of the existence of such tank, specifying the age, size, type, location and uses of such tank.

IDEM is designated as the local agency in 40 C.F.R. Part 280, Appendix II.

[329 IAC 9-2-2](#) provides that:

(a) All notifications required to be submitted under this section must be submitted on a form and in a format prescribed by the commissioner.

(b) Any person who owns an UST system or tank shall, within thirty (30) days of owning such an UST system or tank or bringing such tank or UST system into use, submit notice to the agency to register the tank or UST system....

(c) An owner required to submit notice under this section shall provide notice for each tank the owner owns. The owner may provide notice for several tanks at one (1) location using one (1) form. An owner with tanks located in more than one (1) place of operation shall submit a separate notification form for each separate place of operation.

(d) An owner required to submit notice under this section shall provide all the information required by the form provided by the agency for each tank for which notice is submitted.

Taxpayer maintains that it contacted IDEM several times by phone since the purchase of the two facilities to try and register the USTs, but it was not until 2010 that the USTs were registered with IDEM. However, Taxpayer admits that two "Notification for Underground Storage Tanks" forms, State Form 45223 (45223 form), were never completed and submitted to IDEM in order to register the USTs. IDEM has designated that the 45223 form needs to be filed in order to properly register an UST. Phone calls to IDEM were not the proper method to register the USTs. Although IDEM was apparently able to register the USTs without receiving completed 45223 forms, the Department can only attempt to notify taxpayers that they owe an annual registration fee if the USTs are properly registered with IDEM. Since IDEM has no record that Taxpayer filed two 45223 forms with IDEM in 2006, and Taxpayer admits that it never filed the forms, the Department was not aware that it should have attempted to notify anyone that it owed annual registration fees.

Taxpayer presents additional arguments that cannot be verified, such as notices being sent to a Taxpayer with an identical name. Taxpayer also presents equitable reasons to waive the environmental penalties. Since the Department must make its determination on legal grounds, the Department declines the invitation to waive the penalties based on equitable reasons. Taxpayer has not met its burden of proof, and therefore the environmental penalties have been properly assessed.

### FINDING

Taxpayer's protest is denied.

*Posted: 03/23/2011 by Legislative Services Agency*

An [html](#) version of this document.